

INTERNATIONAL COURT OF JUSTICE

YEAR 1982

1982
24 February
General List
No. 63

24 February 1982

CASE CONCERNING THE CONTINENTAL SHELF

(TUNISIA/LIBYAN ARAB JAMAHIRIYA)

Interpretation of Special Agreement — Sources of law to be applied by the Court — Binding force of Judgment.

Delimitation of continental shelf between adjacent States — Applicable principles and rules of international law — Concept of natural prolongation of the land territory as defining the physical object or location of rights of the coastal State — Role of the concept in delimitation — Effect of geological and geomorphological factors.

Recent trends in the law admitted at the Third United Nations Conference on the Law of the Sea — Articles 76 and 83 of draft convention.

Claim to historic titles justifying (inter alia) drawing of straight baselines — land frontier and maritime limits.

Application of equitable principles with a view to achieving equitable solution — Account to be taken of relevant circumstances — Determination of area relevant for the delimitation — Criterion of proportionality as an aspect of equity.

JUDGMENT

Present : Acting President ELIAS ; Judges FORSTER, GROS, LACHS, MOROZOV, NAGENDRA SINGH, MOSLER, ODA, AGO, SETTE-CAMARA, EL-KHANI, SCHWEBEL ; Judges ad hoc EVENSEN, JIMÉNEZ DE ARÉCHAGA ; Registrar TORRES BERNÁRDEZ.

In the case concerning the continental shelf,

between

the Republic of Tunisia,

represented by

H.E. Mr. Slim Benghazi, Ambassador of Tunisia to the Netherlands,
as Agent,

Professor Sadok Belaïd, sometime Dean of the Faculty of Law, Politics and Economics, Tunis,

as Co-agent and Counsel,

Mr. Néjib Bouziri, Diplomatic Counsellor and former Minister,

Mr. Amor Rourou, Geologico-geophysical Engineer, former Minister of Industry, Mining and Energy,

as Advisers to the Government,

Mr. Robert Jennings, Q.C., Whewell Professor of International Law at the University of Cambridge, President of the Institute of International Law,

Mr. René-Jean Dupuy, Professor at the Collège de France, Member of the Institute of International Law, Secretary-General of the Hague Academy of International Law,

Mr. Michel Virally, Professor at the University of Law, Economics and Social Sciences, Paris, and at the Graduate Institute of International Studies, Geneva, Member of the Institute of International Law,

Mr. Georges Abi-Saab, Professor of International Law at the Graduate Institute of International Studies, Geneva, Associate of the Institute of International Law,

Mr. Yadh Ben Achour, Professor at the Faculty of Law, Politics and Economics, Tunis,

Mr. Pierre-Marie Dupuy, Professor at the University of Law, Economics and Social Sciences, Paris,

as Counsel and Advocates,

Mr. Habib Slim, Lecturer in the Faculty of Law, Politics and Economics, Tunis,

Mr. Mohamed Mouldi Marsit, Director of Conventions in the Office of the Prime Minister,

Mr. Jeremy P. Carver, Solicitor (Coward Chance),

as Legal Advisers,

Mr. Robert Laffitte, Professor emeritus at the French National Museum of Natural History, sometime Professor of Geology and former Dean of the Science Faculty, Algiers,

Mr. Carlo Morelli, Professor of Applied Geophysics and Director of the Institute of Mines and Applied Geophysics at the University of Trieste,

Mr. Habib Lazreg, D.Sc., Geologist, Ministry of the National Economy,

Mr. Daniel Jean Stanley, D.Sc., Oceanographer, consultant in oceanography and marine geology at Washington, D.C.,

as Experts,

Commander Abdelwahab Layouni, Ministry of Defence (Navy),

Mr. Kamel Rekik, Engineer, alumnus of the Ecole Polytechnique, Paris, Ministry of the National Economy,

as Technical Advisers,

Mrs. Hend Mebazaa, Archivist, Ministry of the National Economy,

Mr. Samir Chaffai, Secretary at the Embassy of Tunisia to the Netherlands,
 Mr. Lazhar Bouony, Assistant Lecturer in the Faculty of Law, Politics and Economics, Tunis,
 Mr. Fadhel Moussa, Assistant in the Faculty of Law, Politics and Economics, Tunis,
 Mr. Ridha Ben Hammed, Assistant in the Faculty of Law, Politics and Economics, Tunis,
 Mr. Raouf Karrai, Assistant Lecturer in Geography at the University of Tunis,
 Mr. Farouk Saimanouli, Lawyer, Ministry of the National Economy,
 Mr. Zoubeir Mazouni, Lawyer, Ministry of the National Economy,
 as Assistants,

and

the Socialist People's Libyan Arab Jamahiriya,
 represented by

H.E. Mr. Kamel H. El Maghur, Ambassador,
 as Agent,

Mr. Abdelrazeg El-Murtadi Suleiman, Professor of International Law at the University of Garyounis, Benghazi,
 as Counsel.

Professor Derek W. Bowett, Q.C., President of Queens' College, Cambridge,

Mr. Herbert W. Briggs, Goldwin Smith Professor of International Law emeritus, Cornell University,

Mr. Claude-Albert Colliard, Honorary Dean, Professor of International Law at the University of Paris I,

Mr. Keith Hight, Member of the New York and District of Columbia Bars,

Mr. Antonio Malintoppi, Professor of the Faculty of Law at the University of Rome,

Sir Francis A. Vallat, K.C.M.G., Q.C., Professor emeritus of International Law at the University of London, Member of the International Law Commission, Member of the Institute of International Law,

Professor Mustapha K. Yasseen (deceased, 20 September 1981), Member of the Institute of International Law,

Mr. Walter D. Sohler, Member of the New York and District of Columbia Bars,

as Counsel and Advocates,

Mr. Amin A. Missallati, Professor of Geology, Al-Fateh University, Tripoli,

Mr. Omar Hammuda, Professor of Geology, Al-Fateh University, Tripoli,

Mr. Mohammed Alawar, Assistant Professor of Geography, Al-Fateh University, Tripoli,

Mr. Mohammed Jamal Ghellali, Counsellor, Department of Legal and Treaty Affairs, People's Bureau for Foreign Liaison, Tripoli,
Mr. Seif Jahme, Maritime Department, Tripoli,
Mr. Khaled Gordji, Maritime Department, Tripoli,
Mr. Salem Krista, Cartographic Department, Secretariat of Oil, Tripoli,

Mr. Muftah Smeida, Third Secretary, People's Bureau for Foreign Liaison,

as Advisers,

Mr. Frank H. Fabricius, Professor of Geology at the Institute of Geology and Mineralogy, Technical University of Munich,
Mr. Claudio Vita-Finzi, Reader in Geology, University College, London,

as Experts,

Mr. Rodman R. Bundy,
Mr. Richard Meese, Doctor of Laws,
Mr. Henri-Xavier Ortoli,

as Counsel.

THE COURT,

composed as above,
after deliberation,

delivers the following Judgment:

1. By a letter of 25 November 1978, received in the Registry of the Court on 1 December 1978, the Minister of Foreign Affairs of Tunisia notified the Court of a Special Agreement in the Arabic language signed at Tunis on 10 June 1977 between the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya ; a certified copy of the Special Agreement was enclosed with the letter, together with a translation into French.

2. In the French translation supplied by Tunisia, Articles 1 to 5 of the Special Agreement read as follows [*English translation by the Registry*] :

"Article 1

The Court is requested to render its Judgment in the following matter :

What are the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf appertaining to the Republic of Tunisia and the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and, in rendering its decision, to take account of equitable principles and the relevant circumstances which characterize the area, as well as the recent trends admitted at the Third Conference on the Law of the Sea.

Also, the Court is further requested to specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation so as to enable the experts of the two countries to delimit those areas without any difficulties.

Article 2

Immediately following the delivery of the Judgment by the Court, the two Parties shall meet to put into effect these principles and rules to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this matter.

Article 3

In the event that the agreement mentioned in Article 2 is not reached within a period of three months, renewable by mutual agreement, from the date of delivery of the Court's Judgment, the two Parties shall together go back to the Court and request such explanations or clarifications as may facilitate the task of the two delegations, to arrive at the line separating the two areas of the continental shelf, and the two Parties shall comply with the Judgment of the Court and with its explanations and clarifications.

Article 4

A. The proceedings shall consist of written pleadings and oral argument.

B. Without prejudice to any question that may arise relating to the means of proof, the written pleadings shall consist of the following documents :

(1) Memorials to be submitted to the Court and exchanged between the two Parties within a period not exceeding eighteen (18) months from the date of the notification of the present Special Agreement to the Registrar of the Court.

(2) Counter-Memorials to be submitted by both Parties to the Court and exchanged between them as follows : the Republic of Tunisia shall submit its Counter-Memorial within a period of six (6) months from the date on which it receives from the Court notification of the Memorial ; the Socialist People's Libyan Arab Jamahiriya shall submit its Counter-Memorial within a period of eight (8) months from the date on which it receives from the Court notification of the Memorial.

(3) If necessary, additional written pleadings to be submitted to the Court and exchanged within periods to be fixed by the Court at the request of either Party or, if the Court so decides, after consultation between the two Parties.

C. The question of the order of speaking for the oral argument shall be decided by mutual agreement between the Parties and whatever order of speaking may be adopted, it shall be without prejudice to any question relating to the burden of proof.

Article 5

This Special Agreement shall enter into force on the date on which the instruments of its ratification are exchanged and shall be notified to the Registrar of the Court by both Parties or by either of them."

3. Pursuant to Article 40, paragraph 2, of the Statute, and to Article 39, paragraph 1, of the Rules of Court, a certified copy of the notification and of the Special Agreement was forthwith transmitted to the Government of the Socialist People's Libyan Arab Jamahiriya. By a letter of 14 February 1979, received in the Registry of the Court on 19 February 1979, the Secretary of Foreign Affairs of the Socialist People's Libyan Arab Jamahiriya made a like notification to the Court, enclosing a further certified copy of the Special Agreement in the Arabic language, together with a translation into English.

4. In the English translation supplied by the Libyan Arab Jamahiriya, Articles 1 to 5 of the Special Agreement read as follows :

Article 1

The Court is requested to render its Judgment in the following matter :

What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and the Court shall take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea.

Also, the Court is further requested to clarify the practical method for the application of these principles and rules in this specific situation, so as to enable the experts of the two countries to delimit these areas without any difficulties.

Article 2

Following the delivery of the Judgment of the Court, the two Parties shall meet to apply these principles and rules in order to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this respect.

Article 3

In case the agreement mentioned in Article 2 is not reached within a period of three months, renewable by mutual agreement from the date of delivery of the Court's Judgment, the two Parties shall together go back to the Court and request any explanations or clarifications which would facilitate the task of the two delegations to arrive at the line separating the two areas of the continental shelf, and the two Parties shall comply with the Judgment of the Court and with its explanations and clarifications.

Article 4

- (a) The proceedings shall consist of written pleadings and oral argument.
- (b) Without prejudice to any question which may arise relating to the means of proof, the written pleadings shall consist of the following documents :

First – Memorials to be submitted to the Court and exchanged between the two Parties, within a period not exceeding (18) eighteen months from the date of the notification of this Agreement to the Registrar of the Court.

Second – Counter-Memorials to be submitted to the Court by both Parties and exchanged between them as follows :

The Republic of Tunisia shall submit its Counter-Memorial within a period of (6) six months from the date on which it receives from the Court notification of the Memorial ; the Socialist People's Libyan Arab Jamahiriya shall present its Counter-Memorial within a period of (8) eight months from the date on which it receives from the Court notification of the Memorial.

Third – If necessary, additional written pleadings to be submitted to the Court and exchanged within periods to be fixed by the Court, at the request of either Party, or, if the Court so decides, after consultation between the two Parties.

- (c) The question of the order of speaking for the oral argument shall be decided by mutual agreement between the two Parties and whatever order of speaking is accepted it shall not prejudice any question relating to the presentation of proof.

Article 5

This Agreement shall enter into force on the date of exchange of the instruments of its ratification and shall be notified to the Registrar of the Court by the two Parties or by either of them.”

5. Pursuant to Article 40, paragraph 3, of the Statute and to Article 42 of the Rules of Court, copies of the notifications and Special Agreement were transmitted to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court.

6. Since the Court did not include upon the bench a judge of Tunisian or of Libyan nationality, each of the Parties proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. On 14 February 1979 the Libyan Arab Jamahiriya designated Mr. Eduardo Jiménez de Aréchaga, and the Parties were informed on 25 April 1979, pursuant to Article 35, paragraph 3, of the Rules of Court that there was no objection to this appointment ; on 11 December 1979 Tunisia designated Mr. Jens Evensen, and on 7 February 1980 the Parties were informed that there was no objection to this appointment.

7. By Orders of 20 February 1979 and 3 June 1980 respectively time-limits were fixed for the filing of a Memorial and a Counter-Memorial by each of the two Parties, and the Memorials and Counter-Memorials were duly filed within the time-limits so fixed, and exchanged between the Parties pursuant to the Special Agreement.

8. By a letter from the Prime Minister of the Republic of Malta dated 28 January 1981 and received in the Registry of the Court on 30 January 1981, the Government of Malta, invoking Article 62 of the Statute, submitted to the Court a request for permission to intervene in the case. By a Judgment dated 14 April 1981, the Court found that that request of Malta could not be granted.

9. By an Order dated 16 April 1981, the President of the Court, having regard to Article 4 (b) (3) of the Special Agreement, quoted above, fixed a time-limit for the filing of Replies by the two Parties, and such Replies were filed and exchanged within the time-limit fixed.

10. On 16 to 18 September, 21 to 25 September, 29 September to 2 October, 5 to 9 October, 13 to 15 October, and 19 to 21 October 1981, the Court held public sittings at which it was addressed by the following representatives of the Parties :

For Tunisia :

H.E. Mr. Slim Benghazi,
 Professor Sadok Belaïd,
 Professor Robert Jennings, Q.C.,
 Professor René-Jean Dupuy,
 Professor Michel Virally,
 Professor Georges Abi-Saab,
 Professor Yadh Ben Achour,
 Professor Pierre-Marie Dupuy,
 Professor Robert Laffitte,
 Professor Carlo Morelli,
 Professor Habib Lazreg.

For the Libyan Arab Jamahiriya :

H.E. Mr. Kamel H. El Maghur,
 Professor D. W. Bowett, Q.C.,
 Professor Herbert W. Briggs,
 Professor Claude-Albert Colliard,
 Mr. Keith Highet,
 Professor Antonio Maïintoppi,
 Sir Francis A. Vallat, K.C.M.G., Q.C.,
 Professor Omar Hammuda,
 Dr. Claudio Vita-Finzi.

11. Dr. Frank A. Fabricius was called as an expert by the Libyan Agent, pursuant to Articles 57 and 63 to 65 of the Rules of Court. He was examined in chief by Professor D. W. Bowett and was cross-examined by Professor M. Virally.

12. On 14 October 1981 the Court held a sitting *in camera* at which the Agent of Tunisia showed a film on "The Tunisian Shelf and the Gulf of Gabes : the Low-tide Elevations". The Agent of the Libyan Arab Jamahiriya had previously been afforded the opportunity of studying the film, and had indicated that he did not find it necessary to object to the showing of the film.

13. In the course of the hearings questions were put to both Parties by Members of the Court. Prior to the close of the hearings, oral or written replies to those questions were given by the Agents of the Parties.

14. The Governments of the United States of America, the Netherlands, Canada, Argentina, Malta and Venezuela, in reliance on Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings in the case. By letters of 24 November 1980, after the views of the Parties had been sought, and objection had been raised by one of them, the Registrar informed those Governments that the President of the Court had decided that the pleadings in the case and documents annexed would not, for the present, be made available to States not parties to the case. On 14 September 1981 the Court

decided, after ascertaining the views of the Parties pursuant to Article 53, paragraph 2, of the Statute, that the pleadings should be made accessible to the public with effect from the opening of the oral proceedings, and they were thus at the same time made available to the States mentioned above.

*

15. In the course of the written proceedings, the following Submissions were presented by the Parties :

On behalf of the Republic of Tunisia :

in the Memorial :

“On the basis of the factual and legal considerations set out in the Memorial submitted by the Republic of Tunisia, may it please the Court to adjudge and declare :

I. In reply to the first question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation contemplated in that Article (hereinafter referred to as ‘the delimitation’) is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The rule defined in paragraph 1 above is to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

4. In the areas situated to the east and southeast of the region defined above, the delimitation is to take account of all the relevant circumstances which characterize the area, and in particular :

(a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;

(b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;

(c) the potential cut-off effect for Tunisia which could result from the

particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;

- (d) the irregularities characterizing the Tunisian coasts, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

II. In reply to the second question put in Article I of the Special Agreement of 10 June 1977 :

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline constituted by the Zira and Zuwarah Ridges and of the general orientation of the natural prolongations of the territories of the two countries toward the abyssal plain of the Ionian Sea ;

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (cf. para. 9.25 of this Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coasts of the two States (cf. paras. 9.30-9.34 of this Memorial) ;

in the Counter-Memorial :

“On the basis of the factual and legal considerations set out in the Counter-Memorial submitted by the Republic of Tunisia, may it please the Court to adjudge and declare :

I. In reply to the first question put in Article I of the Special Agreement of 10 June 1977 :

1. The delimitation contemplated in that Article (hereinafter referred to as ‘the delimitation’) is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The delimitation must also be effected in conformity with equitable principles and taking account of all the relevant circumstances which characterize the case, it being understood that a balance must be established between the various circumstances, in order to arrive at an equitable result, without refashioning nature ;

4. The rule defined in paragraphs 1 and 3 above is to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

5. In the area situated to the east and south-east of the region defined above, the delimitation is to take account of all the other relevant circumstances which characterize the area, and in particular :

- (a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;
- (b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;
- (c) the potential cut-off effect for Tunisia which could result from the particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;
- (d) the irregularities characterizing the Tunisian coasts, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

II. In reply to the second question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline constituted by the Zira and Zuwarah Ridges and of the general orientation of the natural prolongation of the territories of the two countries toward the abyssal plain of the Ionian Sea ;

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (see para. 9.25 of the Tunisian Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coast of the two States (see paras. 9.30-9.34 of the Tunisian Memorial) ;

in the Reply :

“The Tunisian Government maintains in full the submissions of its Counter-Memorial and respectfully requests the Court to reject the sub-

missions of Libya in so far as they are contrary to the Tunisian submissions."

On behalf of the Socialist People's Libyan Arab Jamahiriya :

in the Memorial :

"*In view of the facts set forth in Part I of this Memorial, the statement of the law contained in Part II, and the arguments applying the law to the facts as stated in Part III of this Memorial ;*

Considering that the Special Agreement between the Parties requests the Court to render its Judgment as to what principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and requests the Court to take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea ;

May it please the Court, on behalf of the Socialist People's Libyan Arab Jamahiriya, to adjudge and declare :

1. The concept of the continental shelf as the natural prolongation of the land territory into and under the sea is fundamental to the juridical concept of the continental shelf and a State is entitled *ipso facto* and *ab initio* to the continental shelf which is the natural prolongation of its land territory into and under the sea.

2. Any delimitation should leave as much as possible to each Party all those parts of the continental shelf that constitute such a natural prolongation.

3. A delimitation which gives effect to the principle of natural prolongation is one which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is therefore in accordance with equitable principles.

4. The direction of natural prolongation is determined by the general geological and geographical relationship of the continental shelf to the continental landmass, and not by the incidental or accidental direction of any particular part of the coast.

5. In the present case the continental shelf off the coast of North Africa is a prolongation to the north of the continental landmass, and therefore the appropriate method of delimitation of the areas of continental shelf appertaining to each Party in this specific situation is to reflect the direction of this prolongation northward of the terminal point of the land boundary.

6. Application of the equidistance method is not obligatory on the Parties either by treaty or as a rule of customary international law.

7. Whether the application of a particular method of delimitation is in accordance with equitable principles is to be tested by its results.

8. The equidistance method is in itself neither a 'rule' nor a 'principle' and

is not necessarily 'equitable' since its application under particular circumstances may lead to inequitable results.

9. A principle or method of delimitation which disregards the *ipso jure* title of a coastal State to the continental shelf constituting the natural prolongation of its land territory is, *ipso facto*, illegal and necessarily inequitable.

10. In the present case, given the particular geographical configuration, the equidistance method would result in a delimitation of the continental shelf which would be inequitable, inappropriate, and not in conformity with international law.

11. The baselines promulgated by Tunisia in 1973 are not opposable to Libya for the purposes of the delimitation and the results of giving effect to them would in any event be inappropriate and inequitable.

12. For the purpose of achieving an equitable delimitation, the whole of the sea-bed and subsoil beyond the low-water mark along the coast of each Party is to be taken into account" ;

in the Counter-Memorial :

"In view of the facts set forth in Part I of the Libyan Memorial, the statement of the law contained in Part II, and the arguments applying the law to the facts as stated in Part III of the Libyan Memorial ; and

In view of the observations concerning the facts as stated in the Tunisian Memorial and statement of law as therein contained, and the additional facts and the statement of law contained in this Counter-Memorial ;

Considering that the Special Agreement between the Parties requests the Court to render its Judgment as to what principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and requests the Court to take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea ;

May it please the Court, rejecting all contrary claims and Submissions set forth in the Tunisian Memorial,

To adjudge and declare as follows :

1. The concept of the continental shelf as the natural prolongation of the land territory into and under the sea is fundamental to the juridical concept of the continental shelf, and a State is entitled *ipso facto* and *ab initio* to the continental shelf which is the natural prolongation of its land territory into and under the sea.

2. The natural prolongation of the land territory of a State into and under the sea which establishes its *ipso jure* title to the appurtenant continental shelf is determined by the whole physical structure of the landmass as indicated primarily by geology.

3. Submarine ridges on the sea-bed, even if and where ascertained, which

do not disrupt the essential unity of the continental shelf provide no scientific basis for a legal principle of delimitation.

4. The 'fishing rights' claimed by Tunisia as 'historic rights', even if and where ascertained, are in any event irrelevant to shelf delimitation in the present case.

5. The direction of natural prolongation is determined by the general geological and geographical relationship of the continental shelf to the continental landmass, and not by the incidental or accidental direction of any particular part of the coast.

6. In the present case the continental shelf off the coast of North Africa is a prolongation to the north of the continental landmass, and therefore the appropriate method of delimitation of the areas of continental shelf appertaining to each Party in this specific situation is to reflect the direction of this prolongation northward of the terminal point of the land boundary.

7. The practical method for the application of the principles and rules of international law in this specific situation is therefore to continue the reflection of the direction of the natural northward prolongation from the outer limit of the territorial sea, at least as far as the parallel where there occurs a significant change in the general direction of the Tunisian coast which might reasonably be required to be taken into account in order to achieve a delimitation respecting the relevant circumstances in accordance with equitable principles, without affecting the rights of States not Parties to these proceedings.

8. Any delimitation should leave as much as possible to each Party all those parts of the continental shelf that constitute its natural prolongation.

9. A delimitation which gives effect to the principle of natural prolongation is one which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is therefore in accordance with equitable principles. A principle or method of delimitation which disregards the *ipso jure* title of a coastal State to the continental shelf constituting the natural prolongation of its land territory is, *ipso facto*, illegal and necessarily inequitable.

10. Whether the application of a particular method of delimitation is in accordance with equitable principles is to be tested by its results.

11. For the purpose of achieving an equitable delimitation, the whole of the sea-bed and subsoil beyond the low-water mark along the coast of each Party is to be taken into account.

12. While the concept of proportionality is not applicable to the geological and juridical appurtenance of continental shelf which confers *ipso jure* entitlement on a State, it may properly be used as a criterion to evaluate the effect of geographical features on a delimitation in marginal areas.

13. Application of the equidistance method is not obligatory on the Parties either by treaty or as a rule of customary international law. The equidistance method is in itself neither a 'rule' nor a 'principle' and is not

necessarily 'equitable' since its application in particular circumstances may lead to inequitable results.

14. In the present case, given the particular geographical configuration, the equidistance method would result in a delimitation of the continental shelf which would be inequitable, inappropriate, and not in conformity with international law.

15. The baselines promulgated by Tunisia in 1973 are not opposable to Libya for the purposes of the delimitation and the results of giving effect to them would in any event be inappropriate and inequitable” ;

in the Reply :

“Libya confirms and maintains the Submissions made in its Memorial and Counter-Memorial, as follows” (whereafter the Submissions as set out in the Counter-Memorial were reproduced).

16. In the course of the oral proceedings, the following Submissions were presented by the Parties :

On behalf of the Republic of Tunisia :

at the hearing of 25 September 1981 :

“May it please the Court to adjudge and declare :

I. In reply to the first question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation contemplated in that Article (hereinafter referred to as ‘the delimitation’) is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The delimitation must also be effected in conformity with equitable principles and taking account of all the relevant circumstances which characterize the case, it being understood that a balance must be established between the various circumstances, in order to arrive at an equitable result, without refashioning nature ;

4. The rules defined in paragraphs 1 and 3 above are to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

5. In the areas situated to the east and south-east of the region defined above, the delimitation is to take account of all the other relevant circumstances which characterize the area, and in particular :

- (a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;
- (b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;
- (c) the potential cut-off effect for Tunisia which could result from the particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;
- (d) the irregularities characterizing the Tunisian coast, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

II. In reply to the second question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline determined by the Zira and Zuwarah Ridges, and particularly by the Zira Ridge, and by the general orientation of the natural prolongations of the territories of the two countries toward the abyssal plain of the Ionian Sea.

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (see para. 9.25 of the Tunisian Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coasts of the two States (see paras. 9.30-9.34 of the Tunisian Memorial) ;

at the hearing of 15 October 1981, the Agent of Tunisia stated that the Government of Tunisia maintained the Submissions made on 25 September 1981.

On behalf of the Socialist People's Libyan Arab Jamahiriya :

at the hearing of 9 October 1981, the Agent of the Libyan Arab Jamahiriya stated that the Government of the Libyan Arab Jamahiriya confirmed and maintained its Submissions as set forth in the Libyan Counter-Memorial and the Libyan Reply ;

at the hearing of 21 October 1981 the Agent of the Libyan Arab Jamahiriya

stated that the Government of the Libyan Arab Jamahiriya confirmed and maintained unchanged its Submissions as set forth in the Libyan Counter-Memorial.

* * *

17. It is appropriate to begin with a general description of the geographical context of the dispute before the Court, that is to say the general area in which the continental shelf delimitation, which is the subject of the proceedings, has to be effected. However, one of the issues between the Parties has been whether it is necessary, before examining a proposed delimitation, to define the area to be delimited, and if so, what is the effect of such definition. The Parties have also disagreed quite markedly over questions of geographical description, particularly with respect to coastal features; not so much because there is doubt as to the physical facts (except in some sea-bed areas) but rather because the relative importance of a geographical feature, and judgment whether it constitutes a norm or an exception, may vary – or appear to vary – according to the cartographic scale employed, and according to whether the observer contemplates such feature in a much wider context or concentrates upon it in its immediate surroundings.

18. It should be emphasized that the only purpose of the description which follows is to outline the background, and not to define legally the area of delimitation nor to say how the Court views the various geographical features for the purposes of their impact on the legal situation. To the extent that the definition of any feature may command a conclusion of law material to the Court's decision, the definition will be provided at the appropriate point in this Judgment. Similarly, the only purpose of Map No. 1 annexed to the present Judgment is to give a general picture of the geographical context of the dispute, and no particular significance attaches to the choice of scale or the presence or absence of any particular geographical feature.

19. The Republic of Tunisia (hereinafter called "Tunisia") and the Socialist People's Libyan Arab Jamahiriya (hereinafter called "Libya") are both situate on the northern coastline of the African Continent, fronting on the Mediterranean Sea. The more westerly of the two States is Tunisia, lying approximately between 30° N and 38° N and between 7° E and 12° E. To the east and south-east of it lies Libya, approximately between 19° N and 34° N and between 9° E and 25° E. The eastern coast of Tunisia more or less coincides with the western end of a roughly rectangular indentation, longer from west to east than its depth from north to south, in the northern coastline of Africa, the eastern end of which is constituted by the Gulf of Sirt on the Libyan coast. Thus not far west of the point (Ras Ajdir) at which the land frontier between Libya and Tunisia commences on the sea coast, there is a change in the direction of the coastline. If one follows the coast of Libya towards Tunisia, for some distance before and after the frontier point, the general line of the coast is somewhat north of

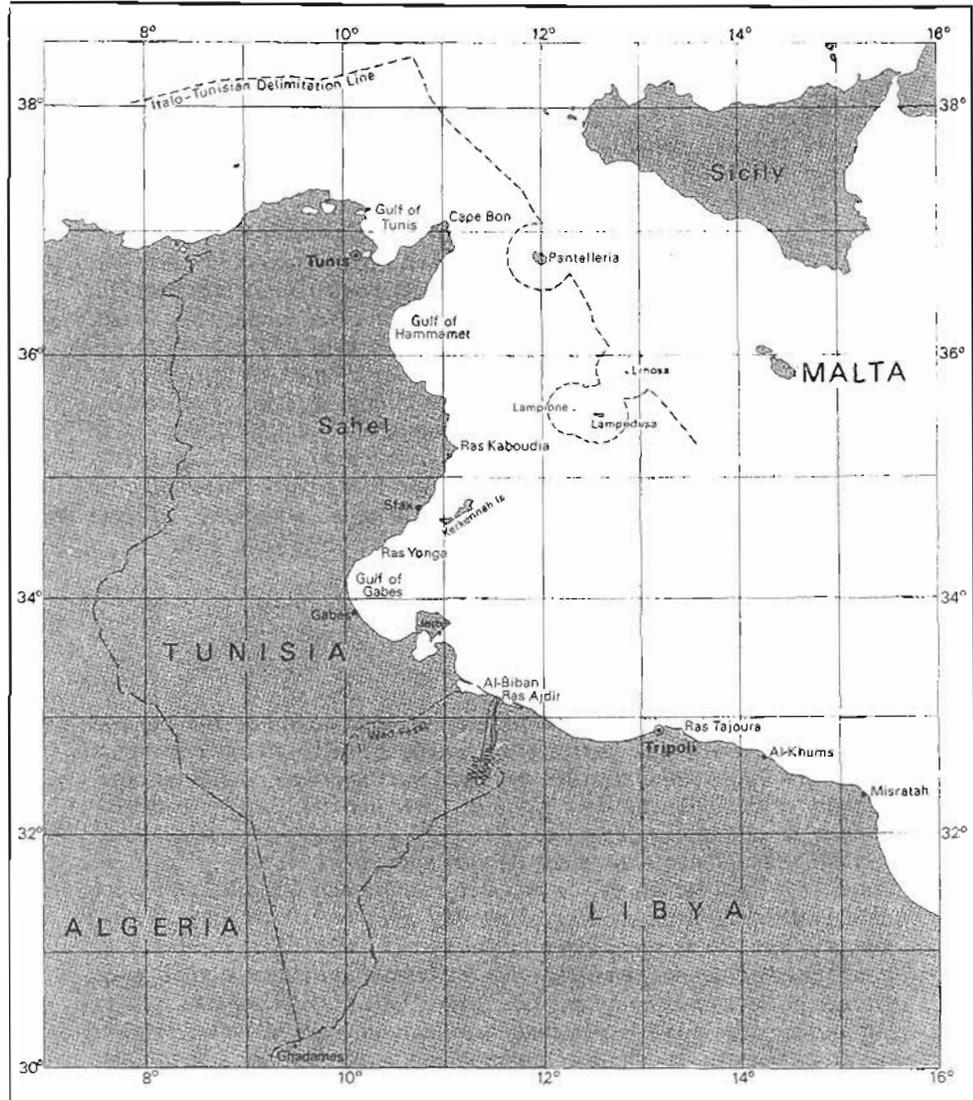
west ; beyond the frontier point, after passing the island of Jerba, one enters the concavity of the Gulf of Gabes, which leads round to a length of coastline running roughly north-east to Ras Kaboudia. Then follows the Gulf of Hammamet, the protrusion (roughly north-eastwards) of Cape Bon, and the Gulf of Tunis, before the final section of the Tunisian coast, which runs again somewhat north of west, though some four degrees of latitude further to the north than the coast on each side of Ras Ajdir.

20. The area in which a continental shelf delimitation will have to be effected is that lying, very broadly, to the north of the coast on each side of Ras Ajdir, bounded on the west by part of the Tunisian coast, but unconfined on the east by any visible feature or agreed delimitation line. Whether the area to be considered includes the territorial sea (claimed to be a breadth of 12 miles by each of the Parties) or any part thereof, is a question in controversy between the Parties, as is the question of the baselines from which Tunisia claims to measure its territorial sea, and that of certain historic rights claimed by Tunisia. So far as limits seawards are concerned, no delimitation agreement has been concluded by either Party with Malta ; Tunisia has concluded an Agreement, dated 20 August 1971, with Italy, effecting the delimitation of the continental shelf between the two countries, primarily on a median-line basis, but with special arrangements for the Italian islands of Lampedusa, Lampedusa, Linosa and Pantelleria. The line so defined is indicated on Map No. 1 annexed to this Judgment.

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21. While the Parties have not concluded any agreement delimiting any part of the continental shelf, or as to the lateral boundary between their respective areas of territorial sea, this has not prevented a certain amount of exploration and exploitation of the continental shelf. Each Party has granted licences or concessions in respect of shelf areas regarded by the Party concerned as necessarily appertaining to itself, and a considerable amount of drilling has taken place. On the Libyan side, the legislative authorization for this process was Petroleum Law No. 25, and Petroleum Regulation No. 1 made in virtue thereof, both of which came into effect on 19 July 1955. However, initial development took place onshore, and it was only in 1968 that the first offshore concession was granted by Libya. Between 1968 and 1976, 15 wells were drilled in an offshore concession area, several of which proved productive. In the meantime, Tunisia had granted its first offshore concession in 1964. A concession granted in 1972 was expressed to be bounded on the south-east by "the maritime boundary between Tunisia and Libya", the position thereof being unspecified ; and in 1974 the relevant concession boundary was specified to be part of

"the equidistance line . . . determined in conformity with the principles of international law pending an agreement between Tunisia and Libya defining the limit of their respective jurisdictions over the continental shelf".



MAP NO. 1

In the same year Libya granted a concession the western boundary of which was (consistently with a previous concession) a line drawn from Ras Ajdir at some 26° to the meridian, that is to say, further west than the equidistance line, so that the result was an overlapping of claims in an area some 50 miles from the coasts. Following protests in 1976 by each Government at the activities of the other, diplomatic discussions led to the signing of the Special Agreement of 10 June 1977 by which the matter was to be brought before the Court. Even after the proceedings before the Court had begun, further activities by each Party led to protests by the other.

* *

22. Each of the Parties filed its own French or English translation, set out in paragraphs 2 and 4 above, of the original Arabic text of the Special Agreement on the basis of which the present dispute has been brought before the Court for settlement. For convenience, the text that will hereafter be referred to in the present Judgment will be, except where otherwise indicated, the English translation made by Libya, which was in turn translated by the Registry into French. That English translation is also generally consistent with the translation made by the Secretariat of the United Nations following registration of the Special Agreement pursuant to Article 102 of the Charter.

23. Under Article 1 of the Special Agreement, the Court is required first to state “the principles and rules of international law [which] may be applied for the delimitation of the area of the continental shelf” appertaining to each of the two countries respectively. The Court is specifically called upon, in rendering its decision, to take account of the following three factors, expressly mentioned in the Special Agreement : (a) equitable principles ; (b) the relevant circumstances which characterize the area ; and (c) the new accepted trends in the Third United Nations Conference on the Law of the Sea. While the Court is, of course, bound to have regard to all the legal sources specified in Article 38, paragraph 1, of the Statute of the Court in determining the relevant principles and rules applicable to the delimitation, it is also bound, in accordance with paragraph 1 (a), of that Article, to apply the provisions of the Special Agreement. Two of the three factors referred to are, however, in complete harmony with the jurisprudence of the Court, as appears from its Judgment in the *North Sea Continental Shelf* cases, in which it held that international law required delimitation to be effected “in accordance with equitable principles, and taking account of all the relevant circumstances” (*I.C.J. Reports 1969*, p. 53, para. 101 (C) (1)). With regard to the third, the “new accepted trends”, the Court would recall what it had to say on the subject of the work of the Third United Nations Conference on the Law of the Sea in the *Fisheries Jurisdiction* cases (*I.C.J. Reports 1974*, p. 23, para. 53, and p. 192, para. 45). It must however take note that the law-making process in this respect has now progressed much further.